IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No.	:	10/663,015	Confirmation No.:	1737
Applicant	:	Polly Stecyk		
Filing Date	:	9/15/2003		
Title	:	PASSIVE ENFORCEMENT METHOD FOR MEDIA RATINGS		
Group Art Unit	:	2423		
Examiner	:	Junior O. Mendoza		
Docket No.	:	705397.53		
Customer No.	:	34313		

Mail Stop Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPEAL BRIEF

Sir/Madam:

This is an appeal to the Board of Patent Appeals and Interferences from a Final Office Action dated May 24, 2010. A Notice of Appeal was timely submitted on October 22, 2010.

Applicant submits this Appeal Brief in accordance with 37 C.F.R. § 41.37.

I. REAL PARTY IN INTEREST

The real party in interest is MITSUBISHI DIGITAL ELECTRONICS AMERICA, INC., a corporation organized and existing under and by virtue of the laws of the STATE OF DELAWARE and having its principal place of business at 9351 JERONIMO ROAD, IRVINE, CALIFORNIA 92618.

37 C.F.R. § 41.37 (c)(1)(i).

II. RELATED APPEALS AND INTERFERENCES

Applicant is not aware of any prior or pending appeals, interferences, or judicial proceedings that are related to, directly affect or would be directly affected by or have a bearing on the Board's decision in the pending appeal.

37 C.F.R. § 41.37 (c)(1)(ii).

III. STATUS OF CLAIMS

At the time of the Notice of Appeal, Claims 1-14, 16, 18-30, and 33-35 were pending in the application and were finally rejected.

Applicant appeals the final rejection of Claims 1-14, 16, 18-30, and 33-35.

37 C.F.R. § 41.37 (c)(1)(iii).

IV. STATUS OF AMENDMENTS

Applicant has not filed any amendments subsequent to final rejection.

37 C.F.R. § 41.37 (c)(1)(iv).

V. SUMMARY OF CLAIMED SUBJECT MATTER

Applicant appeals the rejection of claims 1-14, 16, 18-30, and 33-35, of which claims 1 and 23 are independent claims.

The application and claims are directed to methods for limiting and/or supervising exposure to a consumer electronics device through passive systems that incorporate a facial recognition system. The consumer electronics device can include televisions, video cassette recorders, audio equipment, or any other consumer electronics device whereby user discernable information can be generated. The facial recognition system is used to identify viewers present in the viewing area. Viewer profiles are established that include content-based specifications and time range specifications for individual viewers. Viewer profiles for the viewers in the viewing area are then compared against timing information and/or content-based information for the user discernable information. A control signal is then generated based on the comparison that either allows or blocks a program signal for the user discernable information.

Claim 1

Independent claim 1 recites a method of supervising personal exposure to a consumer electronics device. Claim 1 may be understood with reference to one embodiment of an exemplary passive enforcement system as shown in Figure 3B of the present application and reproduced below for the Board's convenience:

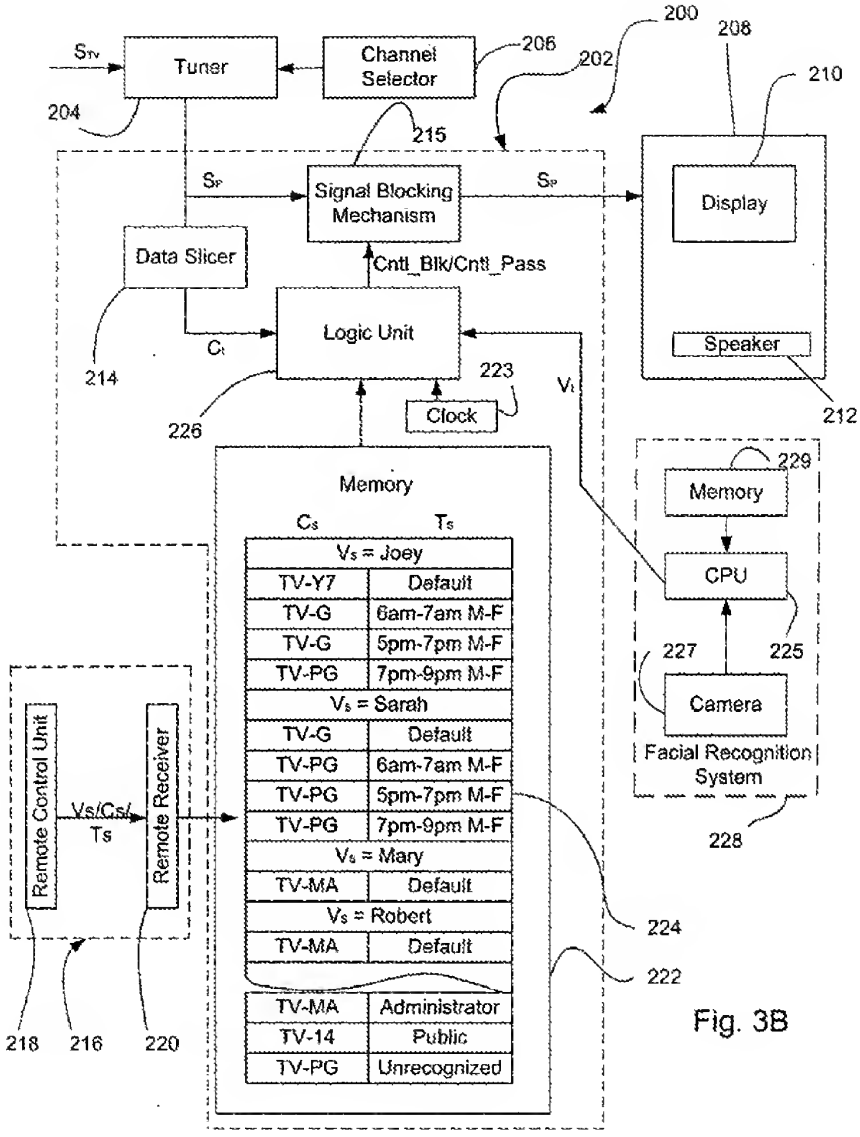

Fig. 3B

Claim 1 recites receiving a program signal (S_{TV}) suitable for conversion by the consumer electronics device (200) into user discernible information (S_P). (204, 214, 226; pp. 8:15 – 9:15, 17:17-21). Claim 1 also recites receiving one or more viewer indicators (V_I) indicative of the viewers present in the viewing area of the consumer electronics device (225, 227, 228, 229; pp. 19:6-19), and then comparing the viewer indicators (V_I) with viewer specifications (V_S) to

identify the viewing profiles associated with the viewers in the viewing area. (226; pp. 19:20-30).

Claim 1 also recites receiving timing information (T_I) indicative of a reference time (pp. 17:25 – 18:8) and selecting a time range specification corresponding to the timing information. (p. 20:1-9).

Claim 1 further recites receiving content-based specifications (C_S) corresponding to the one or more viewing profiles identified and the selected time range specifications (T_S) (226; p. 20:1-16), wherein the viewing profiles include a plurality of time range specifications (T_S). (p. 18:10-14). The time range specifications each correspond individually to a content-based specification. (pp. 23:25 – 24:8).

Claim 1 further recites receiving a content–based indicator (C_I) indicative of the content of the user discernible information. (204, 214, 226; pp. 9:3-24, 19:25-30). The content–based indicator (C_I) is then compared to the content-based specifications (C_S) corresponding to the one or more viewing profiles identified and the corresponding selected time range specifications. (226; pp. 18:19 – 19:5, 20:1-23). A control signal is then generated based on the comparison. (202, 226, 215; pp. 18:19 – 19:5, 20:24 – 21:15).

Claims 2-14, 16, and 18-22 depend directly or indirectly from claim 1, and further comprise additional steps that one may perform in carrying out the disclosed invention.

Claim 23

Independent claim 23 recites a method of supervising personal exposure to a consumer electronics device. Claim 23 recites receiving a program signal (S_{TV}) suitable for conversion by the consumer electronics device (200) into user discernible information (S_P). (204, 214, 226; pp. 8:15 – 9:15, 17:17-21). Claim 23 also recites receiving a content–based indicator (C_I) indicative

of the content of the user discernible information. (204, 214, 226; pp. 9:3-24, 19:25-30). Claim 23 also recites receiving a viewer indicator (V_I) indicative of a viewer present in the viewing area of the consumer electronics device (225, 227, 228, 229; pp. 19:6-19), and receiving and then comparing the viewer indicators (V_I) with viewer specifications (V_S) to identify the viewing profiles associated with the viewers in the viewing area. (226; pp. 19:20-30).

Claim 23 further recites selecting a viewer specification corresponding to the viewer indicator (V_I) wherein the viewing specification includes a plurality of time range specifications (T_S). (p. 18:10-14). The time range specifications each correspond individually to a content-based specification. (pp. 23:25 – 24:8). Claim 23 recites receiving timing information (T_I) indicative of a reference time (pp. 17:25 – 18:8) and selecting a time range specification corresponding to the timing information. (p. 20:1-9).

Claim 23 also recites receiving a content-based rating specification (C_S) of the selected viewer specification corresponding to the selected time range specification. (226; pp. 18:19 – 19:5, 20:1-23). The content–based indicator (C_I) is then compared to a content-based specifications (C_S) corresponding to the one or more viewing profiles identified and the corresponding selected time range specifications. (226; pp. 18:19 – 19:5, 20:1-23). The program signal is then impaired if the content-based program rating (C_I) exceeds the content-based rating specification (C_S). (202, 226, 215; pp. 18:19 – 19:5, 20:24 – 21:15).

Claims 24-30 and 33-35 depend directly or indirectly from claim 23, and further comprise additional steps that one may perform in carrying out the disclosed invention.

37 C.F.R. § 41.37 (c)(1)(v).

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Whether claims 1-3, 6-14, 16, 18-30 and 33-35 are unpatentable under 35 U.S.C. § 103(a) as obvious over U.S. Patent No. 7,134,130 to Thomas ("Thomas") in view of U.S. Published Application No. 2004/0078806 by Johnson et al. ("Johnson") further in view of U.S. Published Application No. 2009/0282428 by Rodriguez ("Rodriguez"). In addition, whether claims 4-5 are unpatentable under 35 U.S.C. § 103(a) as obvious over Thomas in view of Johnson in view of Rodriguez further in view of Korean Publication No. 10-2000-0033070 by Gang-Sik Yoon ("Yoon").

37 C.F.R. § 41.37 (c)(1)(vi).

VII. ARGUMENT UNDER 37 C.F.R. §41.37 (c)(1)(vii)

The Examiner has rejected claims 1-3, 6-14, 16, 18-30 and 33-35 under 35 U.S.C. § 103(a) as being unpatentable over Thomas in view of Johnson further in view of Rodriguez. These claims are not rendered obvious by this combination of prior art. Contrary to the Examiner's conclusion, the references do not teach or disclose the claimed invention. Furthermore, the Examiner's combination of these references relies upon improper hindsight to reconstruct Applicant's invention. The disclosure of Rodriguez would not be combined by one of skill in the art with either Thomas or Johnson because this would alter the principle of operation of Thomas and Johnson and would make Thomas unsatisfactory for its intended purpose. Thus, even assuming that the three references collectively disclosed the claimed invention (which they do not), the combination of the references is improper and cannot support an obviousness rejection.

1. Independent Claims 1 and 23

Independent claims 1 and 23 are not rendered obvious by the cited combination of references. Thomas discloses a method for viewer-based control of content that utilizes a scanner to detect viewers within the viewing area of the television or other media device. (Thomas, Abstract). The system in Thomas includes profiles for each viewer that include information regarding the type of content that can and cannot be viewed by that particular viewer. (Thomas, Col. 7:56-59). If the viewer is present in the viewing area during display of impermissible content, the signal for the content is impaired or blocked. (Thomas, Col. 8:52 – 9:13). The detection of viewers present in the viewing area, and profiles associated with each individual viewer, is critical to the method disclosed in Thomas. Johnson also describes a viewer-based method of controlling access. Johnson describes a method for inputting viewer

profiles that are specific to an individual user and can include information regarding viewing hours, rating limits, and blocked channels. (Johnson, Abstract, [0011]).

However, as acknowledged by the Examiner, Thomas and Johnson do not teach or disclose a method having individual viewing profiles that include a plurality of time range specifications, wherein each time range specification corresponds individually to a separate content-based specification. (May 24, 2010 Final Office Action, p. 7). For this limitation, the Examiner relies upon the disclosure in Rodriguez. For the reasons discussed herein, Rodriguez does not disclose this limitation and the combination of Rodriguez with Thomas or Johnson is not permissible to support a § 103 rejection.

Rodriguez teaches a method for blocking specified programming during certain time ranges. The blocked programming can be based on the rating or type of the program. For example, Paragraph [0116] of Rodriguez provides "The block entry 2922 indicates the user's preference is to block cartoon programs 2925 during the 9:00 a.m. to 12:00 p.m. time slot 2924. In this manner, the user can specify what is to be included and excluded for certain time periods." (emphasis added). Figure 29C of Rodriguez provides an exemplary entry screen for the time-based program blocking:

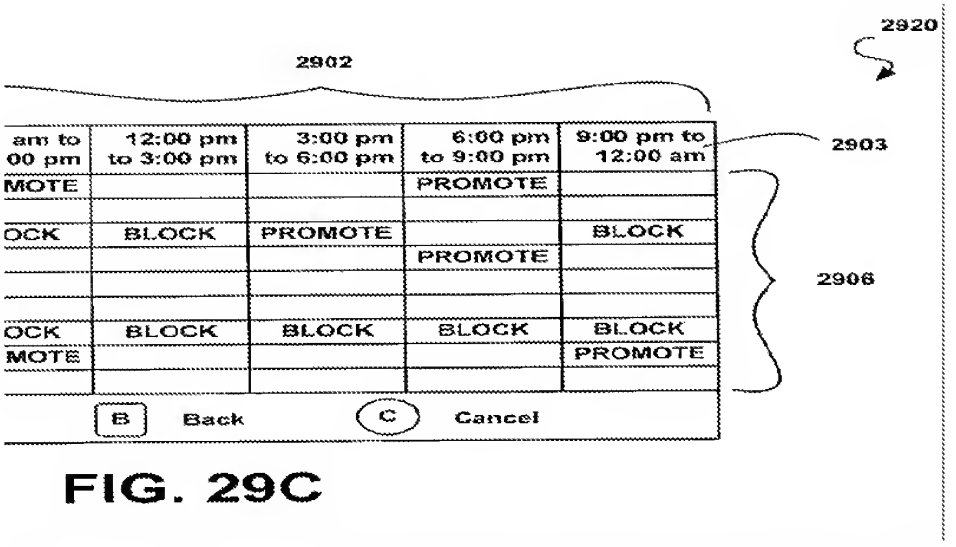

FIG. 29C

To overcome a blocked channel, a PIN must be entered. (See Rodriguez, Fig. 27 reproduced below). Upon receipt of the correct PIN, the channel becomes unblocked and the content is provided.

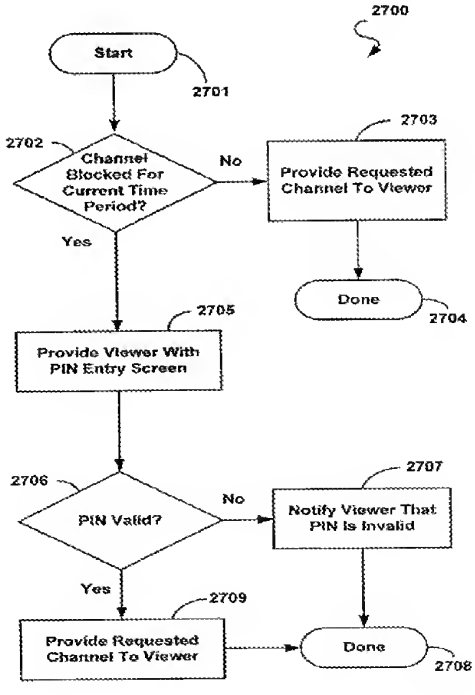

FIG. 27

As a primary matter, the Examiner's use of Rodriguez ignores the claim limitation as a whole. The claim requires that each of the viewing profiles includes a time range specification, not just that time specifications are used in general. Rodriguez does not discuss or suggest the use of viewing profiles and instead implements a method that is only based on time and programming ratings or type and blocks particular programming on a system wide basis. In Rodriguez, the program is either blocked or not blocked based on the time schedule without any reference to a viewer or parameters set for individual viewers as is required by the claims.

In addition, the method in Rodriguez is antithetical to the methods used in Thomas and Johnson and would not have been combined by one of skill in the art with the viewer-based methods of Thomas and Johnson. Unlike the method claimed by Applicant or the methods disclosed in Thomas and Johnson, the method in Rodriguez is not based on the viewers and is instead based only on time of the programming. In Rodriguez, if the channel blocking is overcome by entry of the correct PIN or log-on information, the content is displayed regardless of the viewers present. There is no method in Rodriguez to disrupt the program signal if an additional viewer, for example a young child, enters the room unexpectedly. This simple "all or nothing," non-viewer specific method relied upon by Rodriguez was explicitly distinguished and criticized in Thomas:

> Channel locks that prevent tuning to certain channels without a password, but once unlocked, manual intervention is required to prevent the viewing of a channel's content by persons for whom that content is unsuitable. The present invention provides the ability to automatically block or terminate the display or playing of such material when someone outside the predetermined allowed audience is present. (Thomas, Col. 6:16-23).

This statement by Thomas underscores the fallacy of the Examiner's conclusion that one of skill in the art would readily combine the teachings of Thomas and Rodriguez. The two

methods are fundamentally diverse. Thomas and Johnson each teach a viewer-based method of blocking. The non-viewer based method of Rodriguez would render the method of Thomas unsatisfactory for its intended purpose, therefore there is no suggestion or motivation to make the modification proposed and relied upon by the Examiner. *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984); MPEP § 2143.01. Furthermore, by eliminating blocking dependent on the viewers and instead using only a time-based system, modifying Thomas in light of Rodriguez would impermissibly change the principle of operation of Thomas. *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959); MPEP § 2143.01. Therefore, a person of ordinary skill in the art would not look to a time-based method such as that disclosed in Rodriguez to alter or adjust the viewer-based blocking methods of Thomas or Johnson.

The Examiner has used improper hindsight to support his obviousness rejection as the prior art does not support combination of the cited references. The Examiner has attempted to reconstruct the invention of the present application by combining references that would not be combined by one of skill in the art. Thomas specifically teaches away from non-viewer-based systems such as that in Rodriguez, and thus the Examiner's rejection based on the combination of these references should be withdrawn.

2. Dependent Claims 2-14, 16, 18-22, 24-30, and 33-35

Since independent claims 1 and 23 are patentable for the reasons discussed above, and claims 2-14, 16, 18-22, 24-30, and 33-35 depend from and carry all the limitations of from a patentable independent claim, claims 2-14, 16, 18-22, 24-30, and 33-35 are patentable.

VIII. CONCLUSION

Applicants have demonstrated that the final rejection of claims 1-14, 16, 18-30, and 33-35 is improper and that claims 1-14, 16, 18-30, and 33-35 should be allowed. Applicants request that the Final Office Action of May 24, 2010 be reversed and the present application be allowed.

The Commissioner is authorized to charge any fee which may be required in connection with this Appeal Brief to deposit account No. 15-0665.

Respectfully submitted,
ORRICK, HERRINGTON & SUTCLIFFE LLP

Dated: March 22, 2011 By: */s/ Mark J. Shean*
Mark J. Shean
Reg. No. 54,441

Orrick, Herrington & Sutcliffe LLP
4 Park Plaza, Suite 1600
Irvine, CA 92614-2558
Tel. 949-567-6700
Fax: 949-567-6710
Customer Number: 34313

Claims Appendix

1. A method of supervising personal exposure to a consumer electronics device, the method comprising:

receiving a program signal suitable for conversion by the consumer electronics device into user discernible information;

receiving one or more viewer indicators indicative of one or more viewers present in a viewing area corresponding to the consumer electronics device;

comparing the one or more viewer indicators with a plurality of viewer specifications to identify one or more viewing profiles associated with the one or more viewers present in the viewing area;

receiving timing information indicative of a reference time;

selecting a time range specification corresponding to the timing information;

receiving content-based specifications corresponding to the one or more viewing profiles associated with the one or more viewers present in the viewing area and the selected time range specifications, wherein the one or more viewing profiles includes a plurality of time range specifications, wherein the time range specifications each corresponds individually to a separate content-based specification;

receiving a content–based indicator indicative of the content of the user discernible information;

comparing the content–based indicator with content–based specifications corresponding to each of the one or more viewing profiles associated with the one or more viewers present in the viewing area and corresponding to the selected time range specifications; and

generating a control signal based on the comparison between content–based indicator and content–based specifications.

2. The method of claim 1 further comprising the steps of

scanning the viewing area for the presence of viewers; and

generating a viewer indicator.

3. The method of claim 2 further comprising the step of comparing scanned images of a viewer with stored images of selected individuals.

4. The method of claim 3 further comprising the step of storing images of selected individuals.

5. The method of claim 4 further comprising the step of photographing selected individuals.

6. The method of claim 1 further comprising the steps of:

receiving viewer specifications;

selecting one or more viewer specifications corresponding to the one or more viewer indicators; and

receiving content-based specifications corresponding to the selected one or more viewer specifications.

7. The method of claim 1, further comprising the step of extracting the content–based indicator from the program signal.

8. The method of claim 1, wherein the content–based indicator and the content–based specification is a rating.

9. The method of claim 8, wherein the control signal is generated if the content–based indicator rating exceeds the content–based specification rating.

10. The method of claim 1, wherein the content–based indicator and the content–based specification is a subject matter category.

11. The method of claim 10, wherein the control signal is generated if the content–based indicator category matches the selected content–based category.

12. The method of claim 1, further comprising the step of impairing the program signal in response to the control signal.

13. The method of claim 12, wherein the program signal is blocked in response to the control signal.

14. The method of claim 1, wherein the consumer electronics device is a television system and the user discernible information comprises audio/video information.

16. The method of claim 1 further comprising the steps of

receiving viewer specifications;

selecting one or more viewer specifications corresponding to the one or more viewer indicators; and

receiving content-based specifications corresponding to the selected one or more viewer specifications and the selected time range specifications.

18. The method of claim 1, further comprising the step of extracting the content–based indicator and the timing information from the program signal.

19. The method of claim 1, further comprising the step of generating the timing information within the consumer electronics device.

20. The method of claim 1, wherein the reference time indicated by the timing information is the current time.

21. The method of claim 1 further comprising the steps of

entering a viewer specification corresponding to a selected viewer or group of viewers; and

entering a content-based specification corresponding to the viewer specification.

22. The method of claim 21 further comprising the step of entering a finite time range specification corresponding the viewer and content-based specifications.

23. A method of supervising the exposure to a consumer electronics device, the method comprising:

receiving a program signal suitable for conversion by the consumer electronics device into user discernible information;

receiving a viewer indicator indicative of a viewer present in a viewing area corresponding to the consumer electronics device;

receiving viewer specifications corresponding to selected viewers;

comparing the viewer indicator with the viewer specifications to identify a viewing profile associated with one of the selected viewers present in the viewing area;

selecting a viewer specification corresponding to the viewer indicator, wherein the viewer specification comprises a plurality of time range specifications, each time range specification corresponding individually to a separate content-based rating specification;

receiving a content–based program rating indicative of the content of the user discernible information;

receiving timing information indicative of a reference time;

selecting a time range specification from the two or more time range specifications of the selected viewer specification corresponding to the reference time;

receiving a content-based rating specification of the selected viewer specification corresponding to the selected time range specification;

comparing the content–based rating with the content–based program rating; and

impairing the program signal if the content–based program rating exceeds the content–based rating specification.

24. The method of claim 23, wherein the program signal is impaired by scrambling the program signal.

25. The method of claim 23, wherein the program signal is impaired by blocking the program signal.

26. The method of claim 23, wherein the selected time range specification repeats for each day of a workweek.

27. The method of claim 23, further comprising:

receiving a second viewer indicator indicative of a second viewer present in the viewing area;

comparing the second viewer indicator with the viewer specifications to identify a second viewing profile associated with a second one of the selected viewers present in the viewing area;

selecting a second viewer specification corresponding to the second viewer indicator, wherein the second viewer specification comprising different content-based rating specifications corresponding to each of two or more time range specifications;

selecting a time range specification from the two or more time range specifications of the second viewer specification corresponding to the reference time;

receiving a second content-based rating specification of the second viewer specification corresponding to the selected time range specification;

comparing the second content–based rating with the content–based program rating; and,

wherein the step of impairing the program signal includes impairing the program signal if the content–based program rating exceeds the content–based rating specification or the second content-based rating specification.

28. The method of claim 23 further comprising the steps of

scanning the viewing area for the presence of viewers; and

generating a viewer indicator.

29. The method of claim 28 further comprising the step of comparing scanned images of a viewer with stored images of selected individuals.

30. The method of claim 23, further comprising the step of extracting the content–based program rating from the program signal.

33. The method of claim 23, further comprising the step of extracting the content–based rating and the timing information from the program signal.

34. The method of claim 33, further comprising the step of generating the timing information within the consumer electronics device.

35. The method of claim 34 further comprising the steps of

entering a viewer specification corresponding to a selected viewer or group of viewers;

entering a content-based rating corresponding to the viewer specification; and

entering a finite time range specification corresponding the viewer and content-based specifications.

Evidence Appendix

None.

Related Proceedings Appendix

None.